

***DPP v Muliaina* [2005] VSCA 13 (2 February 2005) – Victorian Court of Appeal**

‘Aggravated burglary’ – ‘Causing serious injury recklessly’ – ‘Common assault’ – ‘False imprisonment’ – ‘Indecent assault’ – ‘Need for denunciation’ – ‘Physical violence and harm’ – ‘Rape’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’ – ‘Threat to kill’

Charge/s: Presentment 1 – false imprisonment; Presentment 2 – causing injury recklessly, indecent assault x 2, rape; Presentment 3 – aggravated burglary, common assault, false imprisonment, making a threat to kill, causing injury recklessly.

Appeal Type: Crown appeal against sentence.

Facts: The primary victim was the male respondent’s former de facto partner and mother of their child. The circumstances of the first presentment were that the victim said she wanted to end their relationship. The respondent dragged her to his house and tied her to a chair. The false imprisonment ended when she was able to convince the respondent to call her mother because their daughter needed feeding. The second presentment related to the respondent’s offending after he had resumed living with the victim. He slapped the victim and hit her with a leather strap. He then tried to force the victim to perform oral sex on him and engaged in penile-vaginal intercourse with her without her consent. The victim obtained an intervention order against the respondent. The offences that were the subject of the third presentment occurred when they had ceased co-habitation and the respondent forced his way into her parent’s home. He assaulted the victim’s friend who was there at the time, threatened to kill the victim, and punched and hit her. The respondent was sentenced to a total effective sentence of four years imprisonment.

Issue/s: The sentence was manifestly inadequate.

Decision and Reasoning: The appeal was allowed, The sentence imposed did not equate with the gravity of the crimes. As per Chernov JA at [21]:

‘It seems plain enough that the respondent’s offending conduct had the aggravating features for which the Director contended. It was brutal and cowardly and was, in the relevant sense, ongoing. It involved, in the main, ferocious physical attacks by the respondent on a much weaker victim whom the respondent claimed to love. On those occasions he treated her as if she were his slave who had to do his bidding or be severely punished if she refused. Such conduct is clearly unacceptable to this community and must be denounced by the courts. That the respondent experienced the brutal upbringing for which he contended does not make his behaviour, even though it may have been a manifestation of his uncontrolled anger, any more acceptable’.